



SEP 2 2003

The Honorable Jeb Bush  
Governor of Florida  
Tallahassee, Florida 32399-0001

Dear Governor Bush:

It is with pleasure that I respond to your request for waivers of various statutory and regulatory requirements under the Workforce Investment Act (WIA) pursuant to the Secretary's authority to waive certain requirements of WIA title I, subtitles B and E and sections 8-10 of the Wagner-Peyser Act. This authority is granted to the Secretary by WIA section 189(i)(4)(A), and set forth in the implementing regulations at 20 CFR 661.420.

These waivers grant states flexibility in program design for seamless program delivery and improved customer service, in exchange for accountability and agreed-to programmatic outcomes. We hope that these changes will assist your state in meeting its workforce needs and improving programmatic outcomes statewide and at the local level.

We appreciate the state's cooperation in working with our Atlanta Regional Office to provide supplemental information on the waiver submissions so that an informed decision could be made on the state's requests. After discussions with state staff and review of the additional information provided by Workforce Florida, Inc., with regard to the initial request for waivers, we are pleased to be able to respond positively. The following is the disposition for each of the state's waiver submissions.

***Waiver 1: Subsequent Eligible Training Provider (ETP) Requirements; 18-month subsequent eligibility requirement (WIA Sec. 122(c)(5) and 20 CFR 663.530)***

The State of Florida is requesting a waiver (copy enclosed) of the requirement contained in WIA section 122(c)(5) and 20 CFR 663.530 that limits the initial eligibility of training providers to a period of 18 months. The waiver requests that the time period for the initial eligibility be extended until January 1, 2004. The state indicates that this waiver, if approved, will allow Florida additional time in which to evaluate training provider performance data in order to effectively implement the required subsequent eligibility process required at 20 CFR 663.535. The planned goals to be achieved under the waiver are to: 1) expand the quantity of statistically valid participant data to be evaluated when



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establishing appropriate levels of performance for subsequent training provider eligibility; and 2) increase the number of eligible training providers, and thereby expand the training choices available for the customer. The waiver is written in the format identified in WIA section 189(i)(4)(B) and 20 CFR 661.420(c) and appears to meet the standard for waiver of requirements relating to key reform principles, as specified at 20 CFR 661.410(c). Accordingly, the state of Florida is granted a waiver of the time limit on the period of initial eligibility of training providers at 20 CFR 663.530 to extend the period of initial eligibility through June 30, 2004.

***Waiver 2: Waive the WIA regulation at 20 CFR 667.160, which implements the WIA Title I provisions relating to the recapture and reallocation of unobligated balances of youth funds (WIA section 128(c)) and adult and dislocated worker funds (WIA section 133(c)).***

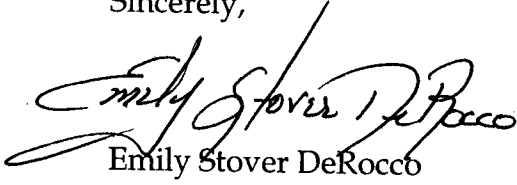
The state of Florida is requesting a waiver of 20 CFR 667.160, which implements the provisions of WIA sections 128(c)(2) and 133(c)(2) relating to the recapture and reallocation by a state of local area unobligated balances of youth funds and of adult and dislocated worker funds, respectively. The state requests any waiver approval that may be necessary to implement a proposed state policy regarding the deobligation and reallocation of local area WIA funds. In addition to provisions for the reallocation of local area funds based on prior year unobligated balances as provided at 20 CFR 667.160, the state policy proposes a mid-year deobligation and reallocation of local area funds based on expenditures. Pursuant to the state policy, both the expenditure and obligation of local funds would be reviewed four times during their two-year life.

The state's request for a waiver of the obligation-based reallocation provision is written in the format identified in WIA section 189 (i)(4)(B) and 20 CFR 661.420(c) and appears to meet the standard for waiver approval at 20 CFR 661.420(e). Accordingly, the state is granted a waiver of the provisions of WIA sections 133(c)(2) and 128(c)(2), and 20 CFR 667.160 to permit a mid-year deobligation and reallocation of local area funds based on obligations and expenditures, as stipulated in the state's waiver plan submission. The granted waiver is effective July 1, 2002, through June 30, 2004.

The granted waivers are incorporated by reference into the state's WIA Grant Agreement, as provided for under paragraph 3 of the executed Agreement, and also constitute a modification of Florida's approved five-year strategic plan. A copy of this letter should be filed with the state's WIA Grant Agreement and the state's approved five-year strategic plan, as appropriate.

We look forward to enabling you to achieve better workforce development outcomes and improve the lives of many Florida residents. We are prepared to entertain other state and local-level waiver requests that Florida may wish to submit, consistent with the provisions of the WIA statute and regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Stover DeRocco", written in a cursive style.

Emily Stover DeRocco

Enclosure



Raymond Gilley, *Chairman*  
Curtis Austin, *President*

November 20, 2002

Anna W. Goddard, Regional Administrator  
U.S. Department of Labor- ETA  
Sam Nwun Atlanta Federal Center  
Room 6M12 - 61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Dear Ms. Goddard:

Thank you for your letter of October 28, 2002, providing an initial reply to Florida's Workforce State Plan, Modification Number four. We understand that review is continuing and will be completed by November 22, 2002, within the 90 day review period, which has been tolled for the items you raise in your letter. Those are specifically the three waiver requests relating to methodology for reallocation of WIA funds, extension of the initial eligibility of training providers on the Eligible Training Provider List (ETPL), and the "merit staff" issue addressed in 20 CFR 652.215 and .216.

In response to your request for additional information in conformity with the language of WIA Section 189 (i)(4)(B) and 20 CFR 663.420 (c) we are hereby submitting a separate waiver plan in two parts that addresses the fund reallocation and ETPL issues, although we recognize that Florida's practices regarding fund reallocation may not require formal waiver because they are consistent with WIA law, albeit going beyond the specifics of WIA law regarding frequency and use of expenditure data in addition to obligations.

Regarding the merit staff issue, we respectfully note that the Department has exercised discretionary authority to allow certain states to follow practices contrary to the language of the current rules, but under the rubric of "demonstrations" that reportedly continue to this day. In fact, the official publication of the WIA Regulations at Federal Register, Vol. 65, No. 158, Page 49386 (August 11, 2000) states, "Under section 3 (a) of the Wagner-Peyser Act, prior to issuance of the Interim Final Rule, the Department authorized demonstrations of the effective delivery of Wagner-Peyser Act services using non-State agency employees (emphasis added) in the States of Colorado, Massachusetts, and Michigan."


We appreciate your statements and those of Assistant Secretary Emily DeRocco regarding your openness to reviewing this issue and clarifying the merit staffing issue. We welcome entering into that dialogue and would appreciate any evaluative

Ms. Anna Goddard  
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reports/studies on the three demonstration states. In view of your statement regarding not entertaining any waiver request regarding merit staffing, we will not submit any attachment or form on that item. To clarify the ambiguity you noted in our plan re Assurance #13, we currently are continuing to provide Wagner-Peyser services through state merit staff, but we definitely want the same freedom to operate a system granted to those other states.

We look forward to any further comments you may have on our modified plan. If there is anything further you would need regarding the attached waiver requests/plan, please let us know.

Sincerely,



Curtis C. Austin,  
President, Workforce Florida



Susan Preigis,  
Director, Agency for Workforce Innovation

cc: Governor Jeb Bush  
Ray Gilley  
Nina Ovieda

Attachments

STATE OF FLORIDA  
WAIVER REQUEST  
WORKFORCE INVESTMENT ACT:  
REALLOCATION OF WIA FUNDS

Pursuant to WIA Section 189 (i)(4)(B) and the WIA Federal regulations at 20 CFR 561.420, the State of Florida requests any waiver approval necessary to implement recently drafted state policy regarding the deobligation and reallocation of local area WIA funds. This policy was developed under the state Workforce Board and included in Modification 4 of the State of Florida Strategic Five-Year Workforce Investment Plan submitted August 14, 2002. The full text of the policy is attached.

In addition to provisions for the reallocation of local area funds based on prior year unobligated balances as provided for by federal regulation (20 CFR 667.160), the state policy provides for mid-year deobligation and deobligation based on expenditures. Pursuant to the state policy, both the expenditure and obligation of local funds are to be reviewed four times during their two-year life:

1. At the mid-point of the program year
2. At the end of the program year
3. At the mid-point of the following program year
4. At the end of the following program year

The state policy incorporates the following minimum expected obligation and expenditure rates:

- a. At least 25% expended at the mid-point of the first year
- b. At least 80% obligated and 50% expended at the end of the first year
- c. At least 75% expended at the mid-point of the second year

All local areas that have met the obligation and expenditure criteria of the state policy are eligible for the reallocation of deobligated funds based on the method used to allocate their regular formula funds.

**A. Statutory Regulations to be Waived:** Should the above policy related to mid-year deobligation of local area funds and/or criteria for minimum expenditure rates be deemed to be not in accord with any provision of WIA federal regulations at 20 CFR 667.160, Florida requests waiver of the federal regulation.

**B. Goals to be Achieved by the Waiver:**

- The state policy provides for the timely identification of idle funds so that they may be redistributed to areas of greater need.

In the past, reviews based obligations alone have not resulted in the identification of a significant amount of funds for redistribution because the reporting of obligations has proven to be subjective and therefore unreliable as a consistent indicator of program

progress. The definition of "obligation" has allowed some local areas to accumulate reserves to cover activities that may not be necessary or feasible for some time. In the meantime, vital programs in other areas have remained unfunded due to temporary funding constraints. Even when under-spending regions were eventually deobligated at the end of the second year, it often left the areas in receipt of needed additional funding an extremely short time frame for implementing additional services. The state's policy utilizes expenditures as a more reliable indicator of program progress and incorporates additional reviews to facilitate the more timely redistribution of funds.

- The state policy promotes the maximum investment of these limited funds and increased levels of service. Through the more timely redistribution of funds from areas with low expenditure rates to areas experiencing unfunded needs, the state will avoid the danger of becoming subject to federal reallocation as long as unmet needs for services exist anywhere within its borders.

**C. State or Local Statutory or Regulatory Barriers:** There are no state or local statutory or regulatory barriers to implementing the state's policy or any federal waiver necessary to implement the policy. Indeed the policy is in accord with the intent of state statutes enacted to implement WIA.

**D. Description of the Individuals Impacted by the Waiver:** All WIA customers as well as the state's regional workforce board will be positively affected by the adoption of the above referenced policy.

- Increased numbers of individuals in need of service will be served.
- Regional Workforce Boards identifying unmet needs or experiencing the sudden need for increased services in their areas will have more timely access to additional resources.
- The rate of investment of WIA funds will increase.
- Regional workforce boards experiencing under-expenditure will not be unduly jeopardized by the deobligation of unneeded funds as they would become eligible to participate in subsequent redistributions of funds based on improved performance and increased needs within their areas.

**E. Opportunity for Public Comment and the Process for Monitoring Implementation of the Waiver:**

The state's policy regarding the deobligation and reallocation local area WIA funds was developed by the Executive Committee of Workforce Florida, the state's workforce investment board. Based on its review of WIA performance and progress toward the goals established in the state's strategic plan, the Board identified the need to revise policy governing the expenditure and reallocation of funds in order to achieve the maximum investment of WIA funds. The policy

was extensively discussed at meetings of the Executive Committee during December 2001 and January 2002 at which public comment was encouraged and received. Public comment was also solicited by email to state agencies, all regional workforce boards, service providers, and other interested parties. The Executive Committee's final draft policy was also distributed for comment prior to a scheduled meeting in February 2002 of Board members and Board staff with representatives of regional workforce boards, state and local agencies, one-stop operators, and other providers, at which the policy and its implementation was discussed and comment received. The policy was adopted for inclusion in Modification 4 of the State's Five-Year Strategic Workforce Investment Plan by the full Workforce Florida Board at public meeting in May 2002. It was then distributed for public comment as part to the State Plan Modification prior to its submittal to the United States Department of Labor in August 2002. Public comment received on Modification 4 of the State Plan is attached to that document. Public comment received at any meeting of the Workforce Florida Board or its Executive Committee is summarized in the meeting minutes.

The implementation of this policy will be monitored by the Workforce Florida and the Agency for Workforce Innovation as they continue to monitor all WIA performance and the progress towards goals and objectives expressed in the State Plan. Information contained in the state's management information system and financial management tracking system will be reviewed and reported to the local areas and Workforce Florida on a regular basis. Review of the implementation and application of the policy will regularly be placed on the agenda of public meetings of State Board and regular scheduled meetings of the Board members and staff, with partner agencies, representatives of regional workforce boards, one-stop operators and other partners.

STATE OF FLORIDA  
WAIVER REQUEST  
WORKFORCE INVESTMENT ACT  
SUBSEQUENT ELIGIBILITY OF TRAINING PROVIDERS

The State of Florida requests a waiver of the requirement contained in WIA, section 122(c)(5) and part 663.530 of the WIA Final Rule that limits the initial eligibility of training providers to a period of 18 months. The waiver requests that the time period for the initial eligibility be extended until January 1, 2004. This waiver will allow Florida additional time in which to evaluate training provider performance data in order to effectively implement the required subsequent eligibility process required in part 663.535 of the rule.

**A. Statutory Regulations to be Waived:**

WIA, Regulations part 663.530.

**B. Goals to be Achieved by the Waiver:**

1. Expand the quantity of statistically valid participant data to be evaluated when establishing appropriate levels of performance for subsequent training provider eligibility;
2. Increase the number of eligible training providers thereby expanding choices for the customer.

During Program Year 1999 (July 1, 1999 -June 30, 2000) Florida had 138 schools offering 198 training programs. Currently, the State List of Initially Eligible Training Providers identifies more than 171 schools offering 223 training programs. This list includes district schools, vocational technical colleges, community colleges, and private for profit and nonprofit schools and training agencies. The complete list is located at: <http://tften.abomarketinfo.com/>

Given that participant performance data (on which provider performance is based) comes primarily from UI wage records, (which by their very nature contain belated data), many early participants are just now appearing in this data source. Thus performance data that is currently available is minimal and does not contain statistically valid numbers. Upon reviewing this limited data, the State Workforce Board and the regional workforce boards have concluded it is insufficient on which to base an equitable decision relative to subsequent certification for training providers.

While it may be possible for regional workforce boards to establish local performance criteria that addresses region specific considerations, without the requested additional time for statewide data collection and analysis, these decisions will be arbitrary and subject to unlimited appeals and possible litigation.

If the waiver is approved, the regional workforce boards will have time to become more familiar with the ETP and ITA processes. This will result in expanded opportunities to advertise the Consumer Report/Subsequent Eligibility process to the training provider community and increase participation at both the participant and training provider levels.

The current retention of eligible training providers on the state list requires the following:

- All training providers must supply data to the Florida Education and Training Placement Information Program (FETPIP) for performance measurement. This includes: all program completers for all students, including WIA students and Welfare Transition students;
- All private schools must be licensed with the Commission of Independent Education per state law;
- All educational institutions must have demonstrated satisfactory performance to the regional workforce board as outlined in state program guidance letter PD WDCP-00-002; and
- At a minimum, the performance information in WIA 122(d)(1)(A)(i) for all participants leaving the provider's program through the most recent reporting period must include
  1. The percentage of participants who completed the program;
  2. The percentage of participants who obtained any unsubsidized employment in an occupation related to the program conducted; and
  3. The wages at placement in unsubsidized employment for all completers.

**C. State or Local Statutory or Regulatory Barriers:** There are no state or local statutory or regulatory barriers to implementing the requested waiver.

**D. Description of the Individuals Impacted by the Waiver:** All target groups (e.g., participants, training providers, regional workforce boards, state workforce board), will be positively affected if the waiver is granted. Benefits include:

- Given the innovation of the entire ITA and training provider eligibility process and the startup difficulties associated with the implementation of any new program, providers initially eligible will have an additional opportunity to establish a performance foundation before subsequent year determinations;
- At the state level additional data and time will be available in which to do a complete and objective analysis; and
- ITA users will have a more comprehensive list of training providers from which to select that is truly reflective of a competitive process that fairly evaluates all providers on a level playing field.

**E. Description of the process used to monitor the progress in implementing the waiver; provide notice to any affected local board; and, ensure meaningful public comment on the waiver:**

The Agency for Workforce Innovation will monitor the implementation of the waiver on a regular quarterly basis to ensure that the revised timeframe is met. The state's intent to seek this waiver was noticed to all regional workforce boards, the business community, organized labor, and the general public through the WIA plan.

modification process. This process provided all affected parties the opportunity to review the request and provide comment as part of the state's WIA plan modification process.